

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 29.03.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.3721 of 2004

S.Radhakrishnan

... Appellant/Petitioner in
WP.4762/95

vs.

1. The Chief Executive Officer,
Tamil Nadu Khadi & Village
Industries Board,
Kuralagam, Chennai-600 108.

2. The Assistant Director,
Khadi & Village Industries
Board, Vellore.

... Respondents/Respondents
in -do-

Appeal under Clause 15 of Letters Patent against the order of the learned single Judge, dated 20.06.2003, made in W.P. No.4762 of 1995.

W.P.No. 4762 of 1995:- Petition presented to this Court under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records of the first respondent relating to his order dated 13.7.94 made in RC.No. 14036/P2/91 quash paragraph 3 of the same.

For Appellant : Mr.P.Jeyaraman, Senior Counsel
for Mr.G.T.Thangavelu.

For Respondents: Mr.S.Packiaraj

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above Writ Appeal is directed against the order of the learned single Judge, dated 20.06.2003, made in W.P. No.4762 of 1995, in and by which, the learned Judge, after observing that the respondents therein are entitled to recover a sum of Rs.1,19,476.90 from the

petitioner, dismissed the Writ Petition filed by him.

2. For convenience, we shall refer the parties as arrayed in the Writ Petition.

3. Case of the petitioner is briefly stated here-under,

According to him, he was appointed as Secondary Grade Assistant (Sales) in Khadi & Village Industries Board (in short 'Board') and posted in Vellore District Godown of the Board. In 1962, he was transferred to Chetpet in North Arcot District. Thereafter, he served in different places. Finally, on 31.07.1991, he retired from the services of the Board as Secondary Grade Assistant in the control of the second respondent. On 04.09.1991, the first respondent passed an order, sanctioning him provisional pension of Rs.788/- from 01.08.1991 to 31.07.1992. Again, on 10.09.1993, the first respondent passed another order, extending the provisional pension of Rs.788/- per month from 1.08.1993 to 31.07.1994. Even for the previous year, he was sanctioned and paid the provisional pension only at the rate of Rs.788/-. Neither any charge sheet was issued to him before his retirement nor any enquiry whatsoever was pending against him at the time of his retirement. After his retirement also, he did not receive any notice for enquiry. While he was expecting retirement benefits, he received an order, dated 13.07.1994, from the first respondent, wherein, the first respondent sanctioned to him pension at the rate of Rs.788/- plus D.A. Per month from 01.08.1991, Rs.26,005/- as gratuity and Rs.32,887/- as commuted value of pension. He also sanctioned reduced pension of Rs.526/- plus DA on Rs.788/-. In para No.3 of the said Order, a sum of Rs.1,37,882/- was stated to be due towards miscellaneous recovery and the entire amount of Rs.58,892/- was sought to be adjusted towards the aforesaid due. In the same order, it is further stated that another sum of Rs.78,990/- was to be recovered as balance due. Aggrieved by the action of the respondents as contrary to the statutory provisions as well as the regulations prescribed, having no other remedy, the petitioner filed the Writ Petition.

4. The respondents did not file counter affidavit, highlighting their stand, however, they produced relevant File for perusal of the learned Judge.

5. By Order dated 20.06.2003, the learned Judge, after verifying the File produced by the Counsel for the Board and taking note of the order, dated 30.05.1994, held that a sum of Rs.1,19,476.90 has to be paid by the petitioner to the respondents and dismissed his writ petition; hence, the present Writ Appeal.

6. Heard Mr.Jayaraman, learned Senior Counsel for the appellant as well as Mr.S.Packiaraj for the respondents.

7. The only point for consideration in this Appeal is as to whether the respondents are justified in issuing the proceedings, dated

13.07.1994, after the order of the respondents, permitting the petitioner to retire on 31.07.1991.

8. In order to sustain the action against the petitioner, reliance was placed on the proceedings of the first respondent - Chief Executive Officer of the Board, dated 29.07.1991, wherein, it was ordered thus,

' Pending disposals of the Charges framed by the Assistant Director, Khadi and Village Industries, Vellore, in the reference second cited, Thiru.S.Radhakrishnan, IInd Grade Assistant, is permitted to retire from the Board's Service on the attaining the age of superannuation on the After Noon of 31.7.91.

2. The Assistant Director, Khadi and Village Industries, Vellore, is requested to retire the individual after obtaining necessary undertaking to make good the amounts if any found to be recoverable from him.

....."

Based on the said proceedings of the Chief Executive Officer; the Assistant Director of the Board, Vellore-3, by his proceedings, dated 31.07.1991, passed the following order:-

" Thiru.S.Radhakrishnan, IInd Grade Assistant, who has been permitted to retire from the Board's Service on attaining the age of superannuation on the A.N. of 31.7.91 in the reference cited, is relieved off his duties on the A.N. of 31.7.91."

9. It is seen that the proceedings of the Chief Executive Officer, dated 29.07.1991, do not disclose at all any specific charge having been framed by the officer concerned or pending against the writ petitioner. As rightly pointed out by the learned Senior Counsel for the appellant, after allowing the petitioner to retire, in the absence of specific charge or charges pending against him on the date he attained superannuation, the respondents cannot be permitted to take action particularly to recover unquantified amount from his pension or retiral benefits.

10. Though the respondents as well as the learned Judge referred to the proceedings of the Assistant director, Vellore, in Na.Ka. No.3220/90/E/dated 30.05.1994, it is not in dispute that those proceedings came to be issued nearly three years after the retirement of the petitioner. We have already stated that the petitioner attained superannuation on 31.07.1991. As rightly pointed out, if there was any specific charge/recovery order/ or amount payable by the petitioner due to his negligence or inaction while discharging duties in the Board, the respondents ought to have initiated proceedings then and there. Even

though the details mentioned in the proceedings of the Assistant Director, dated 30.5.1994, refers to about a lapse, in that, the petitioner failed to recover the dues to the Board for the period 1969-70 to 1971-72, 1979-80, 1982-83 to 1990-1991 etc., there is no material to show as to whether effective steps were taken immediately and whether the petitioner alone was responsible for the lapse. In the earlier part of our order, we have referred to the proceedings of the Chief Executive Officer dated 29.07.1991 and also observed that, except referring to pendency of some charges, no other details had been furnished. In this regard, it is useful to refer to the judgment of the Supreme Court reported in 2005 (4) CTC 403 (Mahadevan, P.V. v. M.D., Tamil Nadu Housing Board). In the said case, certain disciplinary actions were initiated against appellant P.V. Mahadevan, who was working as Superintending Engineer in the Tamil Nadu Housing Board. A charge memo was issued on 08.06.2000. The appellant preferred a writ petition to call for the records, to quash the charge memo by the respondent and to forbear the respondent from in any manner proceeding with the charge memo against the appellant. It was submitted on behalf of the appellant that the charge memo had been issued in the year 2000 of the irregularity in issuing a sale deed in 1990 to one Mr. A.N. Beemaiah who was an employee of the Housing Board and was to superannuate shortly. It was further submitted that though the records were very much available with the respondent, no action had been taken against the appellant since 1990 for about 10 years and no explanation whatsoever was offered by the Housing Board for the inordinate delay in initiating the disciplinary action against the appellant. After pointing out the relevant provisions of the Tamil Nadu Housing Board Act and the dictum laid down in State of A.P. v. N. Radhakishan (1998 (4) SCC 154), the Hon'ble Supreme Court concluded thus,

" Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made

to suffer."

So concluding, the Apex Court quashed the charge memo issued against the appellant and allowed the appeal.

11. Following the decision in Mahadevan's case, a Division Bench of this Court (to which one of us, P.Sathasivam, J., was a party), in Parameswaran vs. State of Tamil Nadu (2006 (1) CTC 476), after finding that the employee had already suffered enough mental agony on account of the protracted disciplinary proceedings, quashed the charge memo.

12. In the case on hand, as pointed out by us earlier, except mentioning some charges framed are pending, admittedly, no detail had been furnished by the authority. We have also referred to the period during which the petitioner was alleged to have failed to recover the dues to the Board. In the light of the law laid down by the Supreme Court in respect of prolonged disciplinary action, we find that the petitioner is in a better position to claim the relief he seeks for inasmuch as he retired as early as on 31.07.1991 and, admittedly, recovery proceeding were initiated on 30.5.1994 that too without affording opportunity to him. All these relevant aspects have not been adverted to by the learned Judge, who has committed an error in dismissing the writ petition.

13. Apart from the above legal and factual position, learned Senior Counsel for the appellant has brought to our notice that even if the respondents proceed to recover the sum from the pension and other retiral benefits of the petitioner, as per Rule 9(2)(b) of the Tamil Nadu Pension Rules, such proceedings cannot be initiated without prior order from the Government. Though learned counsel for the respondents submitted that, now, the said power has been delegated to the Chief Executive Officer of the Board, there is no specific order in terms of the said provisions by the said authority.

14. In the above circumstances, the order of the learned single Judge, dated 20.06.2003, made in W.P. No.4762 of 1995, is set aside. The impugned proceedings of the Chief Executive Officer, dated 13.07.1994, are quashed. Consequently, we direct the respondents to return the amount already recovered, if any, to the petitioner/appellant within a period of eight weeks from the date of receipt of copy of this order.

15. Writ Appeal is allowed on the above terms. No costs.
JI.

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chief Executive Officer, Tamil Nadu Khadi & Village Industries Board, Kuralagam, Chennai-600 108.

2. The Assistant Director, Khadi & Village Industries Board, Vellore.

+ One cc to Mr. G. Thangavelu, Advocate sR 20430

+ One cc to Mr. S. Packiaraj, Advocate sR 20366

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W.A. No.3721 of 2004

29.03.2007.



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